

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK E. HAMANN,)	No. C 07-06008 TEH (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE;
)	GRANTING MOTION TO
vs.)	PROCEED <i>IN FORMA PAUPERIS</i>
)	
KEN CLARK, Warden,)	
)	
Respondent.)	(Docket No. 2)
_____)	

Petitioner, a California state prisoner, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. Petitioner has filed a motion to proceed in forma pauperis (Docket No. 2) pursuant to 28 U.S.C. § 1915(a).

BACKGROUND

According to the petition, Petitioner pleaded guilty in the Superior Court of the State of California in and for the County of Marin to California Penal Code § 203 (mayhem) and § 236 (false imprisonment) and was sentenced to four years and eight months in state prison on February 21, 2006.

Petitioner alleges that he appealed the conviction and sought review with the California Supreme Court. The state high court denied review on October 17, 2007. Petitioner filed the instant federal habeas petition on November 28, 2007.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the Respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” Id. § 2243.

B. Legal Claims

Petitioner claims the following grounds for federal habeas relief: 1) ineffective assistance of counsel in advising him to accept the plea agreement; 2) use of false evidence presented at sentencing hearing that adversely affected his sentence; and 3) the trial court failed to inform Petitioner that by pleading guilty to mayhem, he would serve 85% of his sentence and not 50%. Liberally construed, Petitioner’s claims appear cognizable under § 2254 and merit an answer from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner’s request to proceed in forma pauperis (Docket No. 2) is GRANTED.

2. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on Petitioner.

3. Respondent shall file with the court and serve on Petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus

1 should not be issued. Respondent shall file with the answer and serve on Petitioner a
2 copy of all portions of the state trial record that have been transcribed previously and that
3 are relevant to a determination of the issues presented by the petition.

4 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
5 with the court and serving it on Respondent within **thirty (30) days** of his receipt of the
6 answer.

7 4. Respondent may file a motion to dismiss on procedural grounds in lieu of
8 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
9 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
10 with the court and serve on Respondent an opposition or statement of non-opposition
11 within **thirty (30) days** of receipt of the motion, and Respondent shall file with the court
12 and serve on Petitioner a reply within **fifteen (15) days** of receipt of any opposition.

13 5. Petitioner is reminded that all communications with the court must be
14 served on Respondent by mailing a true copy of the document to Respondent's counsel.
15 Petitioner must also keep the court and all parties informed of any change
16 of address.

17 IT IS SO ORDERED.

18
19 DATED: 03/27/08



THELTON E. HENDERSON
United States District Judge